

The Case of William Love, John Buckworth, Thomas Breton, Thomas Pearl, Edward Pearce, Nathaniel Letton, Merchants, and others, Appealants from a Decree made in the High and Honourable Court of Chancery, Humbly Offered to consideration of the Right Honourable the Lords Spiritual and Temporal in Parliament Assembled.

THe Appealants, together with Sir George Oxinden, Christopher Oxinden, and William Noke, in the year 1656. Advanced a Joynt-stock of 13300 l. and sent it in the Ship *King Ferdinando*, to China, and East-India, upon the Adventurers accompt, according to their respective proportions and Interests therein: And Christopher Oxinden was sent *Supra Cargo*, Who amongst other his Instructions, had Express direction to buy several specific goods at China, proper for sale at *Surat*, and mentioned and set down in a writing or Schedule for that purpose delivered unto him, to the value of 7000 l.

These goods so to be by him bought at China, he had Order, with the Assistance of Sir George Oxinden and William Noke, to sell at *Surat* in India, if he could sell to good profit.

With the money so to be raised by such Sale, or so much thereof as should be necessary, The said Christopher Oxinden had Order and Direction to pay Sir George Oxinden and William Noke, for such goods as they, by the said Adventurers direction, had provided and bought for them in India, according to a Note of Particulars sent to them, amounting in the whole to 10000 l.

The remaining part of the said 13300 l. Cargo, and the profit thereof, the said Christopher was to invest in such goods at China as were proper for the English Market, And to bring them home in the said Ship *King Ferdinando*, if he could not sell them at *Surat*, to good profit; And because the Adventurers had Agreed to pay 130 l. per Month, for hire of the ship, besides Mariners Wages and Victuals, Therefore the said Christopher had Express Direction, so to Order his affairs, as that the ship might be dispatched from *Surat*, and set sail for England by the end of January, 1657.

The Books of Account of the said Cargo, and profit thereby arising, were Expressly Ordered to be kept by one Robert Wilnot, whom, for his great experience in accompts, the Adventurers had hired, and Designed for that very purpose. But contrary to all these Instructions, and the Trust reposed in him.

1. Christopher Oxinden (being brother to Sir George) after his arrival at *Surat*, sold all the goods he had bought at China proper for sale in England, To him the said Sir George, William Noke, and others, at 34 l. per Cent. less than was paid for them in China, and for less by one half than the same would have yielded in England.

2. The said Christopher finding that Sir George and William Noke had, by their own confession, provided but the value of 7789 l. 13 s. of the 10000 l. worth of goods mentioned in the Appealants note of particulars aforesaid, And that they had a great quantity of other goods lying dead on their hands (not agreeing with the Note of particulars aforesaid) he the said Christopher (as the said Sir George and William Noke pretend) accepted of so many of those goods, so lying dead as aforesaid, upon the Appealants Accompt, as amounted unto 7385 l. 13 s. 0 d. more; and thereby, as they pretend, made them Debtors to the said Sir George and William for those goods, and the specific goods, bought by their Direction, the sum of 15175 l. 6 s. 0 d.

Whereas the said Sir George and William had direction to provide goods but to the value of 10000 l. in the whole, of which, those pretended to be provided, fell short nigh 3000 l. so that this the said Christopher his proceeding was a further breach of his trust, And beyond his power to run his Employers in Debt, which he not onely, as they pretend, did, but as an Addition to his fraudulent proceedings, took the said dead goods at far higher rates than really they were worth; And to make the fraud more clear, it appears by the Books of Accompts, that the said Christopher after his buying the said goods, and before the Ships return to England, re-sold part of them to the said Geo. and Will. for above 900 l. less than he paid Them, for them.

3. The said Christopher having thus broken his Instructions, and believing that the Appealants would never Accept of the goods not directed to be bought, and at rates beyond what ever they would sell for; Contrived which way to avoid being called to Account, and to that purpose kept the Ship and Cargo abroad, above One whole year longer than he needed to have done, (he being offered Freight home for her) all which time he traded with her and her Cargo into *Persia*, at the Appealants vast charge for Freight, Victuals, and Wages as aforesaid; which done, (and the said Sir George and William Noke having with the said Christopher received the whole Advantage thereof) They so contrived amongst them, that Sir George came to England with the ship in July 1659; and left Christopher his brother in India.

This being the Case, the Appealants in Hillary Term, 1660. Exhibited their Bill in Chancery against Sir George Oxinden and Jane Noke, Executrix of William Noke, and Elizabeth Dalison, Executrix of Christopher Oxinden, for an Account; To which Bill they not only answered, but Sir George and Jane Exhibited their Cross bill against the Appealants for a pretended debt; who having answered thereunto, and in the Appealants Cause, Issue joyned, Witnesses Examined, and Publication duly passed; the said Causes 14th. June 1661. Car. 2d. came both to hearing together before the Right Honourable Edward Earle of Clarendon late Lord High Chancellor of England; upon which hearing a reference was proposed, and in July 14. Car. 2d. It was referred to five Merchants, two nominated by the Appealants, a d two by the Respondents, and Sir Samuel Mico (named as a fifth by the Court) or to any Three of them, to view the Books of Account, Examine Witnesses to matter of Fact, and, if possible, to reconcile the matters in difference, otherwise to Report specially to the Court.

Pursuant to the said Reference, the Referrees,

1. First called for the Books of Account, but none would be produced, but such as were signed by one Francis Taverner, who (after his coming into England, and delivery of the said Books into some of the Adventurers hands) got them into his hands again, and added (with other Ink) to his own name, formerly subscribed [by Order of Christopher Oxinden.]

2dly. It appeared to them by the Affidavit of Mr. Richard Young a Merchant, that the said Books were made up at Sea, in the voyage homewards, by Sir George Oxinden and the said Taverner, partly by loose papers they found, and partly out of the Conceptions of their own heads, without Willmots privity, though with them in the ship all the while.

3dly. It was clear by the Depositions taken in the Cause, that though Willmot (according to the Appealants express Order) kept the Books of Account during the first part of the voyage, yet afterward Sir George denied to let him have any farther Inspection into the same, or to act any further therein.

Whereupon all the Referrees made a Queition, whether the said Books ought to be made use of, or admitted as evidence.

The Appealants Referrees certified to the Court, that they ought not; but the Defendant's Referrees prevailed with Sir Samuel Mico (who was nominated by the Court) to joyn with them, and they Certified as followeth.

1. In respect of Mr. Young's Affidavit, (which they annexed to their Report, and was, thereupon afterwards read in Court) they referred it to the Determination of the Court, whether the said Books should be allowed as evidence, which if the Court should think fit to do, then.

2. They certified, that by those Books made up and ballanced, it appeared that the Adventurers, and Joint-Stock, were Debtors to Sir George Oxinden, and William Noke in India 3632 l. 19 s. 6 d. without considering the particulars of the Account; whereas there were Errors and sur-charges in the Accompt, amounting to more than the pretended Debt.

3. They certified, that Sir George and William Demanded for Interest of that summe 687 l. 6 s. 5 d. in all 4320 l. 5 s. 11 d.

4. They Certified, that there was but 4696 l. 4 s. 5 d. remaining in Cash of the Joint-Stock; besides the dividend the Adventurers had then-to-fore had of 50 l. per Cent. of their principall; And that out of that, Sir George, having 1000 l. in the Joint-Stock, ought to have 500 l. for his share.

These Causes coming to be again heard 3d. Novem. 1663 before the Earl of Clarendon, he, upon reading the Certificates aforesaid, Decreed, That Young's Affidavit should be set aside, And that the Appealants should pay 4320 l. 5 s. 11 d. to the said Sir George and William, & 500 l. more, to the said Sir George for his Dividend as aforesaid; And Decreed, Christopher Oxinden to pay the Appealant 96 l. 3 s. which Decree Sir George and Jane Noke, Executrix of William, got Inrolled, whereupon the Appealants could have no relief by Bill of Review, till first they had conformed thereunto; which having done, and the money paid, they exhibited their Bill of Review, Against Sir Henry and Sir James Oxinden (Executors of Sir George Oxinden) and against Thomas Atkins the Executor of Jane Noke; to Review and Reverse the aforesaid Decree, and Assigned several Errors conteyned in the body thereof.

And for which the same ought to have been Reversed, particularly, That there were not proper parties to the Decree, for that if such Debt had been due to Sir George and William, yet it was Contracted by Christopher contrary to Express Instructions of the Adventurers, and he was no party to the Sute, though the onely proper party to have Controverted the same; And the Appealants being no way privy to the pretended debt, nor concerned therein, ought not to have been obliged thereby, the same not being contracted by any power derived from them, or for goods useful to them, neither was the said Christopher authorized to run them into debt, beyond the Joint-stock he was intrusted with by them; nor was it Probable he had so done. In as much as the Cargo and Joint-stock, and the proceed thereof, after three years voyage without any Loss at Sea, or otherwise, fell short one half of the Principall, Besides divers other material Errors in the said Bill of Review set forth.

The Cause came to Hearing before the Right Honourable Sir Orlando Bridgman, late Lord Keeper of the Great Seal of England, 31 Octob. 23th. Car. 2d. who declared,

1. That the Errors assigned were Errors in Fact onely, and not in Law.

2. That the Court of Chancery, could not reverse a Decree upon a Bill of Review, where the Errors Assigned were onely Errors in Fact.

3. That had his Lordship heard the said Cause Originally, he should not have made the said Decree, and

4. That the Appealants are onely Relievable by your Lordships in Parliament Assembled, The Supreme Court of Judicature, of this Kingdom.

Whereupon the Appealants have Exhibited their Appeale to this Honourable House, And most humbly pray

First, That the aforesaid Decree may be Reversed.

Secondly, That they may be at Liberty to proceed upon their own Original Bill in Chancery for an Accompt.

Thirdly, That they may be restored to the 4320 l. 5 s. 11 d. which, pursuant to the said Decree, they have paid, together with Interest for the same.

Fourthly, To receive such further Relief as to your Lordships shall seem Agreeable to Equity and Justice, and for that purpose that Sir Henry and Sir James Oxinden, Thomas Atkins, and others, may be Summoned to Appear and put in their Answer in Writing. And a Day appointed for the hearing this Cause at the Barr of this Honourable House.

